Department of Energy
Washington, DC 20585

October 19, 2021

Austin R. Evers
American Oversight
1030 15th Street NW
Suite B255
Washington, DC 20005

Via email: foia@americanoversight.org

Re: HQ-2020-00052-F

Dear Mr. Evers:

This is a supplemental response to the second partial response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You requested:

> 1. All records reflecting expenses associated with DOE officials traveling with the U.S. delegation to Ukraine on or about May 19 to May 21, 2019. All invoices, expense reports, government credit card bills, reimbursements related to the trip—including but not limited to hotel bills, meals, per diem costs, and transportation expenses—are responsive to this request.
>
> 2. All briefing materials provided to the Office of the Secretary in advance of (1) Secretary Perry's meeting with Ukrainian officials in Ukraine on or about May 19 to May 21, 2019; (2) Secretary Perry's dinner with President Zelensky in Belgium on or about June 4, 2019; (3) Secretary Perry's meeting with Ukrainian officials in Poland on or about August 31 to September 2, 2019; and/or (4) Secretary Perry's meeting with Ukrainian officials in Lithuania on or about October 7, 2019.
>
> 3. Any readouts or summaries of (1) Secretary Perry's meeting with Ukrainian officials in Ukraine on or about May 19 to May 21, 2019; (2) Secretary Perry's dinner with President Zelensky in Belgium on or about June 4, 2019; (3) Secretary Perry's meeting with Ukrainian officials in Poland on or about August 31 to September 2, 2019; and/or (4) Secretary Perry's meeting with Ukrainian officials in Lithuania on or about October 7, 2019.
>
> 4. All records reflecting communications (including email messages, email attachments, official cables, handwritten notes, formal readouts, or informal summaries) sent or received by the DOE officials specified below regarding

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(1) Secretary Perry's meeting with Ukrainian officials in Ukraine on or about May 19 to May 21, 2019; (2) Secretary Perry's dinner with President Zelensky in Belgium on or about June 4, 2019; (3) Secretary Perry's meeting with Ukrainian officials in Poland on or about August 31 to September 2, 2019; and/or (4) Secretary Perry's meeting with Ukrainian officials in Lithuania on or about October 7, 2019.

Specified DOE Officials:

i. Secretary Rick Perry
ii. Deputy Secretary Dan Brouillette
iii. Former Chief of Staff Brian McCormack
iv. Anyone currently serving in the capacity of Chief of Staff
v. Under Secretary Mark Menezes
vi. Samuel Buchan, Special Adviser
vii. William Cooper, General Counsel
viii. Anyone serving in the capacity of White House Advisor or Liaison

Please produce all responsive records from February 1, 2019, through the date the search is conducted.

Your request was assigned to DOE's Office of Executive Secretariat (ES) and Office of the General Counsel (GC) to conduct a search of their files for responsive documents. The search started on October 16, 2019, which is the cutoff date for responsive documents. On March 16, 2020, you received a first partial response to this request consisting of forty-three (43) documents.

On June 21, 2021, you received a second partial response consisting of twenty-one (21) documents. Seven (7) documents were sent to the Department of State (DOS) for consultation, attachment 21 to document 13 was referred to DOE's Office of Classification, Office of Environment, Health, Safety and Security (Classification Office), and attachment 22 to document 13 was sent to the Export-Import Bank of the United States (EXIM) for consultation.

On July 15, 2021, you received a supplemental response to the second partial response, consisting of document 16, which had been sent to the DOS for consultation, as well as attachment 21 to document 13, which had been referred to the DOE's Classification Office. The remaining six (6) documents sent to DOS will be released once DOS provides release determinations on their equities.

On July 15, 2021, you received a third and final partial, consisting of fifty-three (53) documents. Seven (7) documents were sent to the DOS and will be released once DOS provides release determinations from their office.

This letter serves as a supplemental response to the second partial for DOE. EXIM has provided release determinations for attachment 22 to document 13, which had been sent to EXIM for

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consultation. This document is now being released to you as described in the accompanying index.

Upon review, DOE has determined that certain information should be withheld in the documents pursuant to Exemption 4 of the FOIA, 5 U.S.C. § 552, (b)(4).

Exemption 4 of the FOIA protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." 5 U.S.C. § 552(b)(4). This exemption is intended to protect the interests of both the Government and submitters of information. Exemption 4 affords protection to submitters who provide trade secrets, or commercial or financial information to the Government by safeguarding them from the competitive disadvantages that could result from disclosure. The exemption covers two broad categories of information in Federal agency records: 1) trade secrets, and 2) information that is (a) commercial or financial and (b) obtained from a person, and (c) privileged and confidential.

The information withheld under Exemption 4 includes sensitive commercial or financial information that is maintained in confidence by the submitter and that which is "so customarily kept private, or at least, closely held by the person imparting it." *Food Marketing Institute v. Argus Leader Media*, 139 S.Ct. 2356, at 2363.

This satisfies the standard set forth at 5 U.S.C. § 552(a)(8)(A) that agencies shall withhold information under FOIA "only if (I) the agency reasonably foresees that disclosure would harm an interest protected by an exemption . . . ; or (II) disclosure is prohibited by law . . . ." 5 U.S.C. § 552(a)(8)(A) also provides that whenever full disclosure of a record is not possible, agencies shall "consider whether partial disclosure of information is possible . . . ." Thus, we have determined that, in certain instances, a partial disclosure is proper.

Pursuant to 10 C.F.R. § 1004.7(b)(2), I am the individual responsible for the determination to withhold the information described above. The FOIA requires that "any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt." 5 U.S.C. § 552(b). As a result, a redacted version of the documents are being released to you in accordance with 10 C.F.R. § 1004.7(b)(3).

The FOIA provides for the assessment of fees for the processing of requests. See 5 U.S.C. § 552(a)(4)(A)(i); see also 10 C.F.R. § 1004.9(a). In our October 16, 2019 letter, you were advised that your request was placed in the "other" category for fee purposes. Requesters in this category are provided with two free hours of search time and 100 free pages of duplication. In that same letter, we informed you that your fee waiver was granted. Thus, no fees will be charged for processing your request.

You also requested expedited processing of your request. Your request for expedited processing was initially denied in our letters dated October 16, 2019. Upon reconsideration of our decision to deny expedited processing of your request, your request was granted in our letter dated November 22, 2019.

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If you have any questions about the processing of the request or this letter, your attorney may contact Hilarie Snyder, Trial Attorney, at Hilarie.E.Snyder@usdoj.gov or 202-305-0747.

I appreciate the opportunity to assist you with this matter.

Sincerely,

Alexander C. Morris

Digitally signed by Alexander C. Morris
Date: 2021.10.19 07:24:15 -04'00'

Alexander C. Morris
FOIA Officer
Office of Public Information

Enclosures

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INDEX

Request #: HQ-2020-00052-F

Supplemental response to second partial response for Mr. Austin R. Evers for:

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vii. William Cooper, General Counsel
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Please produce all responsive records from February 1, 2019, through the date the search is conducted.

At this time, DOE has located one (1) attachment to one (1) document responsive to the second partial response to your request.

- One (1) attachment to one (1) document *is being released in part pursuant to Exemption 4.*

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(b) (4)

We encourage you to review our attached EXIM Reference Guide. We draw your attention to the sections about EXIM financing products, EXIM process tools and EXIM policies.

Please note that this letter does not represent a financing commitment. Upon receipt of an application for financing, EXIM will conduct its standard due diligence prior to issuing a final commitment for this transaction. All final commitments must be in compliance with EXIM policies as well as program, legal and eligibility requirements.

If you have any questions about this Letter of Interest, or how to work with EXIM, please contact Miguel Penaloza at telephone (202) 565-3684, or via email at miguel.penaloza@exim.gov. We would welcome the opportunity to discuss further details of EXIM financing in support of this transaction.

Sincerely,

Bonnie J. Cybulko
Vice President (Acting)
Industrial Finance Division
Project Finance Division
EXIM Bank

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